IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO. 6 OF 2004

Kailash Bhagat,
Presently lodged in
Central Jail, Aguada,
Goa. ... Petitioner

versus

1. State of Goa
through Chief
Secretary, Panaji,
Goa.

2. Inspector General
of Prisons, Collector
North Goa, Panaji,
Goa.

3. Superintendent of
Prisons, Aguada
Central Jail,
Aguada, Goa. ... Respondents

Mrs. Asha A. Desai, Advocate for the Petitioner.

Mr. S. N. Sardessai, Public Prosecutor for the Respondents.

CORAM : P. V. HARDAS, J.

DATE : 5TH FEBRUARY, 2004.

ORAL JUDGMENT

Rule. Rule made returnable forthwith. By

consent of the parties, this Petition is decided finally at the stage of admission.

2. In the present Petition, the Petitioner impugns the Order dated 2nd January, 2004, passed by the Inspector General of Prisons, Panaji, Goa. The Inspector General of Prisons, Panaji, Goa, by the Order impugned in the present Petition had rejected the application for parole filed by the Petitioner on the ground that it was revealed from the report of the Superintendent of Police, Sitamadhi District, Bihar, that there was likely to be disturbance of peace in the village on account of the release of the Petitioner on parole as the Petitioner was suffering from Aids.

3. The Petitioner had applied for being released on parole on 8th October, 2001. Since his application was not being decided, the Petitioner had filed a Writ Petition in this Court being Writ Petition No.26 of 2002. This Court by a Judgment dated 30th August, 2002, had directed the Respondent to decide the application within 8 weeks and had also imposed cost of Rs.10,000/-. The application of the Petitioner dated 8th October, 2001, came to be rejected by Order dated 23rd October, 2002. The Petitioner meanwhile filed another application dated 15th April, 2003. The Petitioner was required to come to this Court again by filing Criminal

Writ Petition No.29 of 2003 and this Court by its Judgment dated 29th November, 2003, had directed the Inspector General of Prisons, Panaji, Goa, to decide the application of the Petitioner within 6 weeks. Accordingly, by the Order impugned in the present Petition, the application came to be rejected.

4. Mr. S. N. Sardessai, learned Public Prosecutor appearing for the Respondents has placed the report of the Superintendent of Police, Sitamadhi District, Bihar. According to the report, an enquiry was conducted and an apprehension is expressed in the report that as the residents of the village, who are mostly Muslims and are illiterate are likely to create some disturbance in the village on learning that the Petitioner suffers from Aids. This report does not spell out the basis for nurturing such an apprehension. This report is also not based on any statements of the villagers alleged to have been recorded. Therefore, according to me, this cannot be made a ground for declining to release the Petitioner on parole.

5. The Petitioner is said to be suffering from Aids and according to him, this may perhaps be the last time when he would be visiting his native place and visiting his aged parents, relatives and friends. He has also sought the release on parole on the ground that

he wants to dispose of some property which is standing in his name. In the peculiar facts, according to me, the reasons stated by the Petitioner ought to have been considered as sufficient reasons for ordering the release of the Petitioner on parole.

6. Accordingly, Criminal Writ Petition is allowed. The Petitioner is directed to be released on parole for a period of 30 days on the Petitioner executing a PR Bond in the sum of Rs.20,000/- with one surety in the like amount. On his release, the Petitioner shall report to the nearest Police Station and inform the Superintendent of Central Jail, Aguada, the name of the Police Station where the Petitioner has reported. The Petitioner shall thereafter on every third day report his attendance between 8 a.m. to 9 a.m. till the expiry of the period of parole.

7. Rule made absolute on the above conditions with no order as to costs.

P. V. HARDAS, J.

RD.